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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Report of the Secretary-General

Situation of human rights in Cambodia

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I. INTRODUCTION

1. The Special Representative of the Secretary-General for Human Rights in Cambodia was appointed pursuant to the Commission on Human Rights resolution 1993/6 of 19 February 1993[1] to undertake the following tasks:

(a) To maintain contact with the Government and people of Cambodia;

(b) To guide and coordinate the United Nations human rights presence in Cambodia;

(c) To assist the Government in the promotion and protection of human rights.

2. The Secretary-General appointed Thomas Hammarberg as his Special Representative for human rights in Cambodia in early 1996, following the resignation of Michael Kirby upón his appointment to the High Court of Australia. From his appointment on 23 November 1993 until his resignation in April 1996, Mr. Kirby undertook seven official missions to Cambodia and reported successively to the General Assembly (A/49/635 and A/50/681) and the Commission on Human Rights.[2]

3. Since he assumed the functions of Special Representative in May 1996, Mr. Hammarberg has undertaken five official missions to Cambodia and reported to the General Assembly (A/51/453) and the Commission on Human Rights.[3]

4. The Cambodia Office of the United Nations High Commissioner for Human Rights was established in October 1993, pursuant to Commission on Human Rights resolution 1993/6. The mandate of the Cambodia Office includes the following:

(a) Building institutions and legal structures for human rights and democracy;

(b) Securing a system for the administration of justice consistent with international standards;

(c) Strengthening of civil society;

(d) Strengthening of human rights activities at the local and provincial level;

(e) Raising human rights awareness and providing human rights education.

5. In its resolution 51/98 of 12 December 1996, the General Assembly endorsed the recommendations and conclusions of the Special Representative[4] and requested the Secretary-General to provide all necessary resources to enable the Special Representative to continue to fulfil his tasks expeditiously. The Assembly expressed serious concern at the comments made by the Special Representative concerning the continuing problem of impunity, which in effect placed the military and police above the principle of equality before the law.

6. The Assembly welcomed the proposed measures outlined by the Government of Cambodia in its comments[5] on the report of the Special Representative, to ensure that the forthcoming communal and national elections were free and fair, that members of the armed forces remained neutral during the election campaign, that the individual vote was confidential and that local and international observers were welcomed. The Assembly commended the Government for its constructive approach to the inclusion of Cambodian human rights non-governmental organizations in the rehabilitation and reconstruction of Cambodia and recommended that their skills be drawn upon to assist in ensuring that the forthcoming elections were free and fair. It called upon the Government to ensure fair access to government television and radio regardless of political affiliation and to investigate cases of violence and intimidation directed at minor political parties and their supporters, as well as against media personnel and offices, and to bring to justice those responsible.

7. The Assembly welcomed the efforts made by the Government to promote and protect human rights but expressed grave concern about the serious violations of human rights as detailed in the reports of the Special Representative and his predecessor, and called upon the Government of Cambodia to prosecute all those who had perpetrated human rights violations. The Assembly urged the Government to give priority attention to combating child prostitution and trafficking, and to improve the conditions of prisons.

8. The present report is submitted in accordance with General Assembly resolution 51/98, in which the Assembly requested the Secretary-General to report on the recommendations made by the Special Representative on matters within his mandate, and on the role of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and the people of Cambodia in the promotion and protection of human rights. Instead of submitting two reports as in previous years, the Secretary-General has combined information on the two aspects of the human rights programme in Cambodia in the present report.

9. After the adoption of the General Assembly resolution 51/98, the Commission on Human Rights, in resolution 1997/49 of 11 April 1997,[1] noted with concern the situation of human rights, especially the functioning of the system of justice, as reported by the Special Representative.[3]

10. The Commission reaffirmed the concerns expressed by the General Assembly, strongly condemned the violent attack on a peaceful and lawful opposition rally in Phnom Penh on 30 March 1997, and called upon the Government of Cambodia to take immediate measures to uphold the rule of law in order to prevent the recurrence of such an outrage and to bring the perpetrators to justice.

11. The Commission further requested the Secretary-General, through his Special Representative for human rights in Cambodia, in collaboration with the Centre for Human Rights, to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law.

II. RECOMMENDATIONS MADE BY THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS IN CAMBODIA ON MATTERS FALLING WITHIN HIS MANDATE

A. Third, fourth and fifth missions to Cambodia of the Special Representative of the Secretary-General for human rights in Cambodia

12. The Special Representative of the Secretary-General for human rights in Cambodia, Thomas Hammarberg, undertook his third mission to Cambodia from 5 to 18 March 1997, his fourth mission from 6 to 17 June 1997, and his fifth mission from 31 August to 4 September 1997. The present report is based on these missions and was finalized in mid-September 1997.

1. Third mission to Cambodia, 5-18 March 1997

13. During his third mission to Cambodia, the Special Representative visited, in addition to Phnom Penh, the province of Battambang, where armed conflict had taken place between forces loyal to the two major political parties within the Government, the Cambodian People's Party (CPP) and the Front Uni national pour un Cambodge indépendant, neutre, pacifique et coopératif (United National Front for an Independent, Neutral, Peaceful and Cooperative Cambodia) (FUNCINPEC) and the province of Koh Kong. This mission focused on the situation of formal education and offences committed by the military and the police. The Special Representative continued to examine the administration of justice and the preparation of the elections.

14. In the area of the right to education, the focus of the Special Representative was access to and quality of education, namely, education for all without discrimination and meaningful learning of life skills and ethical values. In Phnom Penh, the Special Representative met with directors of two important programmes of assistance in the educational sector - the Programme d'appui au secteur de l'education primaire au Cambodge, funded by the European Union, and the Cambodia Assistance to Primary Education programme, funded by the United States Agency for International Development (USAID) - with the Inspector of Education/Dean of Faculty of Pedagogy, and with the Director and advisors of the Buddhist Institute. In Battambang, the Special Representative met with the provincial Director of the Primary Education Department and provincial school principals. The Special Representative was informed of the tremendous problems and challenges in the field of education. The budget for education represents a mere 8 per cent of the national budget. Physical conditions of schools are often deplorable. Schoolteachers receive very low salaries and have to rely on other jobs during working hours, such as driving taxis. Sometimes teachers keep important lessons from normal classes for private courses, for which students have to pay. Parents contribute as much as or even more than the State to the education of a child in the form of various payments. School attendance is low, with a high drop-out rate for girls. Corruption is widely spread and acknowledged by the public in the conduct of examinations and the issuance of diplomas.

15. The military has been responsible for a large number of abuses committed against civilians. In the province of Battambang, it was reported to the Special Representative that over 60 per cent of the crimes committed against individuals were carried out by military personnel, who generally enjoyed protection from senior commanders and were rarely concerned about justice. Civilian courts are unable to take action against military offenders because of intimidation by the latter. In the past, there have been incidents such as the military surrounding the court during a hearing and freeing prisoners. Article 51 of the Civil Servants Act, which the Council of Ministers has extended to include the military, provides structural impunity to the military. The Special Representative has continuously requested the Government to repeal or amend this article. Throughout his meetings with senior officers of the fifth military region and with the head of the gendarmerie in Battambang, the President of the Military Tribunal, the Military Prosecutor, the Chief of Staff of the Royal Cambodian Armed Forces, and the Minister of Defence, the Special Representative has stressed the seriousness of the problem of impunity. He emphasized that those responsible for offences must be punished according to the law. Otherwise, training alone will not be effective.

16. The Special Representative visited prisons in Battambang and in Koh Kong, and talked to prison authorities, as well as prisoners. He encountered the same serious problem as during his previous missions, namely, the delay of the monthly provision of payment to prisons from the Ministry of the Interior. As a result, prisons have to borrow money with high interest rates from local lenders. Prisoners suffer from malnutrition and disease. The Special Representative raised the issue with the co-Ministers of the Interior in the strongest terms. His view on this issue has been that prisoners are deprived of liberty but not sentenced to starvation, and that the State has no right to imprison someone if it can not feed that person.

17. Torture has been widely practiced by the police in several provinces; some deaths qualified as "suicides" have occurred in police custody. The Special Representative talked with several human rights non-governmental organizations and legal defence organizations and visited a detention cell at Svay Por police station in Battambang, where such a suicide had happened. No independent investigation was carried out to determine the responsibility of the police. The Special Representative raised his concern with court officials, provincial governors, the provincial police Commissioner and Deputy Commissioner and the co-Ministers of the Interior.

18. The effective functioning of the justice system and, in particular, the independence of the judiciary have been seriously undermined by several factors, including military intimidation, political pressure, very low salaries and a limited level of legal training of the judges and prosecutors, publicly recognized corruption of the judicial personnel, and article 51 of the Civil Servants Act. The Special Representative held discussions with judges and prosecutors in Battambang and Koh Kong.

19. With regard to the preparation of the elections, the Special Representative held discussions with the co-Ministers of the Interior and other relevant parties, including staff of the Cambodia Office of the High Commissioner for Human Rights, the Resident Representative of the United Nations Development

Programme (UNDP), the Special Representative of the Secretary-General for Cambodia, representatives of non-governmental organizations and several ambassadors in Phnom Penh. The Special Representative expressed his concern that a legal framework for the elections, including a commune election law, a national election law, and a political parties law, had still not been adopted. The Special Representative underlined the challenging task of monitoring political violence with the approach of the elections.

2. Fourth mission to Cambodia, 6-17 June 1997

20. During his fourth visit to Cambodia, the Special Representative held meetings with key government officials, including both Prime Ministers, the Minister of the Interior, the Minister of Justice, the Minister of Foreign Affairs and the Minister of Information. He also held a meeting with the Joint Commission for Abnormal Conflict Resolution, consisting of the co-Ministers of the Interior, the co-Ministers of Defence, the Chief and Deputy Chief of General Staff of the Royal Cambodian Armed Forces, and the Director and Deputy Director of the national police. The Special Representative also met with several members of the National Assembly, and representatives of non-governmental organizations, journalists, experts on Cambodia, the diplomatic community and United Nations agencies and programmes. He had the opportunity to meet with Lakhan Mehrotra, the newly appointed Special Representative of the Secretary-General for Cambodia.

21. Wide-ranging issues were discussed at these meetings, including measures needed to promote stability and respect for human rights, the implications of the current political deadlock, the investigation of political violence and the handling of past grave human rights violations. In addition, the Special Representative continued to examine the situation of the administration of justice, the protection of the rights of the child, labour rights and the holding of the elections.

22. On the question of addressing past grave violations, the Special Representative discussed with the two Prime Ministers resolution 1997/49 of the Commission on Human Rights, in which the Commission requested the Secretary-General to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law. Both Prime Ministers stated the need for such international assistance and, on 21 June 1997, co-signed a letter of request to the Secretary-General. The Special Representative is committed to assist the Secretary-General in finding appropriate means to help Cambodia in its effort to establish the truth about the atrocities committed in the past, to bring to justice those found guilty and to build national reconciliation.

23. In a meeting with the Joint Commission for Abnormal Conflict Resolution, the Special Representative raised the concern of the international community about peace and stability in Cambodia. He stressed the interdependence between stability and human rights and welcomed the establishment of the Joint Commission as a positive step towards promoting respect for human rights in a peaceful society. He outlined the importance of having a professional police

and military force, which were politically neutral and acted in a manner that created trust, not fear, among the civilian population.

24. The Special Representative expressed concerns about the lack of progress in the preparations for the elections, in particular with regard to the legislative framework for the holding of the elections which had not been adopted owing to the inability to convene the current session of the National Assembly. He held discussions with the non-governmental organization coalitions, the Committee for Free and Fair Elections (COMFREL) and the Coalition for Free and Fair Elections (COFFEL), on the role they could play in the electoral process. The Special Representative held discussions with the Minister of Information on ensuring equal access to the media for all political parties and raised his concern about the denial of approval for the request of the Buddhist Liberal Democratic Party (BLDP), Son Sann faction, to operate a radio station.

25. On the serious challenges which Cambodia faces with regard to the protection of children's rights, the Special Representative received from both Prime Ministers their firm commitment to ensuring educational access to all children and fighting the widespread problem of child prostitution and trafficking in children. The Special Representative was pleased to note that the report of Cambodia on the implementation of the Convention on the Rights of the Child had been submitted to the two Prime Ministers and that they have both agreed to transmit it to Geneva for consideration by the Committee of the Rights of the Child. The Special Representative discussed the work of the governmental agency Cambodia National Council for Children with its Secretary-General, and met with several non-governmental organizations active in the area of children's rights and visited their programmes. The Special Representative was encouraged to learn that the police has made some progress in combating child prostitution and trafficking.

26. In the area of the administration of justice, the Special Representative continued to examine the functioning of the judiciary, the situation of the prison administration and law enforcement. He was deeply disappointed to note that no political murder cases had been brought before the court. He expressed his shock in learning of the 30 March grenade attack on a peaceful and authorized demonstration, and called for a thorough investigation. The Special Representative discussed with the two Prime Ministers and the Minister of Justice the urgent need to convene the Supreme Council of Magistracy and the Constitutional Council. He noted the statement by the Second Prime Minister that he was willing to take the necessary steps to ensure impartiality of the judiciary, including reviewing the links between judges and any political party, in order to develop confidence and trust, which would enable the establishment of these two independent bodies. The Special Representative visited the T3 prison in Phnom Penh and spoke with the prison director, detainees and prisoners. He raised his concerns about the prison situation, in particular concerning delays in payment. The Special Representative held follow-up meetings with the Battambang police commissioners and Acting Governor and submitted to them extensive documentation on torture cases, which demonstrated a widespread practice. The Battambang authorities and the Director-General of the national police assured the Special Representative that an investigation into these cases would take place.

3. Fifth mission to Cambodia, 31 August-5 September 1997

27. The Special Representative expressed his deep concern about the human rights violations that occurred during the armed violence from 2 to 7 July 1997 and its aftermath. He was in close contact with the Cambodia Office of the High Commissioner for Human Rights throughout that period. In preparation for the Special Representative's fifth mission, the Cambodia Office assembled information on summary executions, disappearances, torture and detentions from 2 July 1997. The Office was assisted by governmental officials in obtaining access to places of detention for soldiers captured and briefly held after the fighting in early July 1997.

28. In a letter dated 22 August 1997, the Special Representative submitted a memorandum to the Government, providing data on, in particular, a number of instances of reported extrajudicial executions of persons held in custody by military troops. The Special Representative requested a criminal investigation into at least 41 cases referred to in the memorandum, and requested that those responsible for summary executions or other serious crimes in that connection be promptly brought to justice. He noted with regret that so far no one had been arrested or prosecuted in connection with those violations. The Special Representative also proposed that the Government publish a list of all places of detention and that registers of all detainees be made available to human rights organizations and all other interested parties. He noted with regret one serious instance when United Nations officials had been prevented, with the open threat of violence, from entering an area where there were reports of executions. He furthermore requested the Government to take strong action to prevent troops from violating important procedures for the cremation of dead bodies. The Special Representative also proposed an independent inquiry into the overall human rights situation as it had developed since 2 July 1997 and pledged his willingness to contribute information and advice to such a broad investigation.

29. During his fifth mission, the Special Representative had concrete discussions with Government leaders, in particular with Second Prime Minister Hun Sen, about the 22 August 1997 memorandum. The Second Prime Minister agreed that serious investigations were required into cases of executions and torture, as reported by the Cambodia Office. He also issued a permit to the Office to visit all places of detention, including regular prisons and facilities under the control of the Ministry of Defence.

30. The Special Representative also discussed with the Second Prime Minister the latter's critical references to staff members at the Cambodia Office of the United Nations High Commissioner for Human Rights. He suggested a clear procedure for such discussions and offered to look into concrete complaints, if any, in line with established United Nations practices.

31. The Special Representative was also received by His Majesty King Norodom Sihanouk who gave encouragement to the United Nations work for human rights in Cambodia.

B. Political rights

1. Protection against political violence

32. On 30 March 1997, a peaceful, legal and authorized political demonstration organized by the Khmer Nation Party (KNP) was brutally attacked by unidentified men in Phnom Penh. As the demonstrators were assembled in front of the parliament building and were delivering their messages, four hand grenades were thrown into the crowd of approximately 170-200 persons. Seven people were killed instantly. Others died on the way to hospital or soon after arrival. At least 16 people lost their lives and over 100 were injured. Among the survivors were the party leader, Sam Rainsy, and two other senior party executives, who had obviously been the target of the attackers.

33. The King and the Government condemned this act of terror in strong terms and ordered an official inquiry. In a speech made in Ta Khmau on the afternoon of the massacre, the Second Prime Minister condemned that attack and expressed his condolences to the victims and their families. At the same time, he suggested that the leadership of KNP might have organized the attack to put the blame on the Government and in particular CPP. An official investigation commission was established, headed by the Director-General of the national police. It invited witnesses to come forward and sought the assistance of experts from the United States Federal Bureau of Investigation to draw composite images. Such drawings of suspected persons based on descriptions by witnesses were published in the newspapers. In spite of these efforts, the investigation has so far not established who the perpetrators and their protectors were. No one has been arrested or prosecuted as responsible for this odious crime. By mid-September 1997, the results of the proceedings of the Commission of Inquiry had not been released to the public.

34. The request of KNP to organize the demonstration on 30 March was, for the first time, authorized by the Ministry of the Interior. A written authorization was issued on the morning of 29 March by the Ministry. At noon, it was delivered to KNP headquarters and copied to the municipal police, the gendarmerie, the district police and the office of the protection police for appropriate action. Officials from those institutions confirmed having received the letter on time. They also confirmed that they took no special measures to ensure public order and to protect the demonstrators, which was unusual since police forces as a rule are strongly represented at demonstrations. The representative of the Ministry of the Interior explained that the Ministry had taken no particular security measures in order to avoid being accused of intimidating the demonstrators.

35. There were, however, heavily armed soldiers in battledress positioned since early that morning about 200 metres from where the demonstrators were to assemble. These soldiers, who were armed with AK-47s and B-40 rocket launchers, belonged to the Second Prime Minister's personal bodyguard unit, as he himself subsequently confirmed. As far as is known, this was the first time ever that these soldiers were dispatched to a demonstration. Their presence, military equipment and, according to witnesses, hostile attitude, indicated a preparedness for combat, which contrasted with the small and peaceful demonstration.

36. The soldiers provided no protection to the demonstrators. After the attack, they made no attempt to rescue any of the injured but instead took up battle positions, pointing their guns towards the scene of the attack. Some even threatened and beat injured demonstrators who were fleeing towards them. They made no attempt to arrest any of those who were seen throwing the grenades. Several witnesses indicated that the soldiers protected the escape of two perpetrators. According to their testimonies, the two men, dressed in civilian clothes, threw two grenades before running away from the scene towards the soldiers, one of them chased by demonstrators. The soldiers made no attempt to stop the two men as they passed through their line. The same two men were then seen entering the compound of a pagoda, whose accesses, as well as the two adjacent streets, had been sealed off by the soldiers. The two men crossed the pagoda compound and exited by the pagoda's western gate, under the soldiers' protection.

37. The fact that the investigation into this crime has so far produced no results reinforces the impression of impunity in cases of political violence in Cambodia. The Special Representative previously reported on the murder of journalists Thou Char Mongkol, Noun Chan, Sao Chan Dara and Thun Bun Ly, on the attempted murders on journalists Nguon Non, Ek Mongkol, Cheng Sokna and Leng Sam Ang, and the violent attacks on the opposition newspapers Morning News, New Liberty and Khmer Conscience. There have been no serious investigations leading to arrest and prosecution in any of these cases.

38. Neither has there been any outcome of the investigation of the double grenade attack on the peaceful participants of the Congress of BLDP, Son Sann faction, in September 1995, in which over 30 persons were injured. Similarly, there has been no punishment in any of the other instances of reported political violence, including death threats, harassment and intimidation.

39. The Cambodian armed forces were never fully integrated and depoliticized after the 1991 peace agreements. Military commanders and units continued to be identified with one political grouping or the other, and chains of command based primarily on party loyalty remained. This situation aggravated the consequences of political tensions and conflicts between the two major parties in the coalition Government. Another destabilizing factor in the increasingly polarized political environment was the fact that the bodyguard teams of the two Prime Ministers had been developed into heavily armed units of 1,000 soldiers or more. When the Special Representative met in June 1997 with the eight-person committee established to resolve conflicts, he emphasized the two-way relationship between respect for human rights and peaceful resolution of political conflicts. That is why clear procedures for handling such disputes are necessary.

40. The armed developments starting on 2 July had serious consequences in relation to human rights. The battles in Phnom Penh during 5 and 6 July 1997 were indiscriminate in the sense that little regard was paid for the safety of civilians; at least 50 people were reported killed and many more injured. During, and some days after, the fighting, soldiers and gendarmes violated numerous homes and offices in widespread looting.

41. The developments of 5 and 6 July had a political dimension. The headquarters of FUNCINPEC and KNP were attacked and vandalized, as was the residence of the First Prime Minister and those of many other FUNCINPEC officials and KNP leader Sam Rainsy. Party records were confiscated. The radio and television stations affiliated with FUNCINPEC were taken over. Names of leading FUNCINPEC military men were listed as wanted. The First Prime Minister was ousted and named a traitor without proper legal process and his party was requested to nominate a new First Prime Minister. A change in the composition of the Government had been initiated and carried out by armed force. The Special Representative referred to this in a statement as a coup d'état. The Second Prime Minister objected to this term during their meeting on 4 September and stated that forces loyal to the First Prime Minister Prince Norodom Ranariddh, had started movements for a military coup, but had been halted.

42. In the days following the coup, the Cambodia Office of the United Nations High Commissioner for Human Rights began to receive allegations of politically motivated arrests and detention, extrajudicial executions, killings and disappearances of members of the FUNCINPEC party. The first instance to be confirmed was that of Ministry of the Interior Secretary of State Ho Sok who was executed after arrest, at the Ministry of the Interior. His execution was officially recognized by the authorities. The Cambodia Office was invited by the Second Prime Minister and the Acting Head of State to coordinate the monitoring of all human rights violations allegations, to assist in establishing facts and to report findings to the Government. The preliminary findings by the Cambodia Office were described in a 25-page memorandum which was submitted by the Special Representative to the Government on 22 August 1997. This document was made public on 5 September 1997.

43. In the context of widespread rumours about arrests, executions and disappearances, and of the evacuation of their nationals by several embassies, numerous persons affiliated with FUNCINPEC, BLDP and KNP, including senior political, military and police officials of those parties, parliamentarians, leading activists and supporters, as well as affiliated journalists, reported threats and intimidations and expressed fears for their lives and safety. All newspapers which had previously supported FUNCINPEC and KNP, and were either supported by those parties, ceased to publish as most of their staff went into hiding. During this period, the Cambodia Office received numerous requests for protection and provided emergency assistance to a large number of persons.

44. In view of these developments, extraordinary measures are required in order to build basic trust among the various political parties in the country. Without effective confidence-building measures and a new spirit of tolerance inspired by the leadership, the rift between political groups is likely to continue to widen, thus increasing instability and postponing national reconciliation, not to mention a democratization of political life. An atmosphere of fear runs contrary to these objectives and undermines the very concept of democratic elections. Further investigations into previous political assassinations and violence, including the 30 March massacre, are necessary in order to bring all these cases to a just conclusion. Firm legal and political actions are needed to break the phenomenon of impunity. Political leaders should demonstrate in action that they do respect previous agreements whereby the army, security and police forces will stay politically neutral. Too seldom

have political leaders in Cambodia taken a strong stand against the wrongdoings of their followers.

2. Preparations for free and fair elections

45. During his missions in March, June and August-September 1997, the Special Representative again discussed issues related to the preparation of the elections and, in particular, the need for a legal framework guaranteeing free and fair elections and for effective measures to protect freedom of expression.

46. In June 1997, the two Prime Ministers announced that the national election would be held on 23 May 1998. The Prime Ministers and their parties, FUNCINPEC and CPP, also agreed that the commune elections would be postponed until after the national elections. At the time of writing of this report, the draft national election law had not yet been adopted by the National Assembly.

47. In addition to the election law, a law on political parties is urgently needed to guarantee the legal status and operations of all parties, including opposition parties. A draft law on this subject has been under consideration for over a year but has not yet been adopted. It is essential that the right to form parties and for them to open offices be protected by law. Requirement for registration as a political party should be in the spirit of the Constitution and not raise unreasonable demands. The criterion included in a recent draft that each applicant party had to prove support from at least 5,000 members seems unjustified. Likewise, the provision in the draft election law that all parties have to deposit 10,000,000 riels (about US$ 3,300) in order to take part in the poll, appears restrictive.

48. All senior politicians in Cambodia have stated that the right to establish and operate political parties must be respected. Yet, almost two years after its founding, KNP remains unrecognized. The Special Representative reminds the Government of its statement, through the First Prime Minister on 11 December 1996, in support of a liberal law on political parties with full rights for all parties to participate in the forthcoming elections, and a similar statement made by the Second Prime Minister during the Special Representative's first mission in July 1996. The Special Representative urges the Government to formally register KNP without further delay and to instruct all armed forces and other governmental personnel that all registered parties have the right to open offices and conduct political activities in all parts of Cambodia. Recognition of all new parties would send a signal of good faith, indicating that all Cambodians, regardless of their political views, can participate in the political process. Internal procedures within the political parties should be respected by outsiders, including by other parties and the Government. Several cases of intimidation and attempted bribery of parliamentarians and party workers have, however, been reported to the Special Representative. Such methods distort the functioning of democracy.

49. A crucial ingredient in a free and fair election is an independent electoral commission. Provisions of the law should ensure that an independent, unbiased and effective administrative structure is in place. The commission should comprise citizens of high moral standing with the ability to act in an

impartial manner. To ensure that the commissioners are independent, and are seen to be independent, they should be appointed and salaried through a mechanism which does not make them liable to political pressure. The draft election law submitted by the Council of Ministers suggested a composition of the commission which would make the representatives of the political parties dominant in numbers. Clearly, the commission must communicate with the party headquarters and listen to their complaints, but to make them decision makers creates a risk of bringing political disputes inside the commission itself.

50. Another necessary law is that on the Constitutional Council, which is given responsibility under the Constitution for resolving disputes related to the election of members of the National Assembly. The lack of a Constitutional Council at the time of national elections could result in severe difficulties, since without a functioning Constitutional Council there would be no legal mechanism for the resolution of contested Assembly seats.

51. Fair and equal access to the media is another crucial requirement of a free and fair election. While all political leaders in Cambodia state that there must be equal access to radio and television, the reality is at present quite different. The Cambodian People's Party dominates coverage on the State-owned stations. When smaller parties applied for broadcasting licenses they have been refused. The Khmer Nation Party has been denied a radio and television license. In early 1997, the Ministry of Information threatened to close the radio station belonging to the Son Sann faction of BLDP, the third party in the National Assembly. The situation has worsened considerably since July 1997. The radio stations connected with FUNCINPEC and the Son Sann faction of BLDP were closed, and FUNCINPEC television programming was brought under the control of the CPP-dominated national television station.

52. If there is to be fair and equal access to the media, and therefore to the Cambodian voter, each political party must be treated equally under the law. The Minister of Information, Ieng Mouly, told the Special Representative in June 1997 that all FM radio frequencies had been allotted to planned provincial radio stations around the country. According to the Minister, these stations would come on line in 2000 or thereafter. The Secretary of State at the Ministry of Information, Khieu Khanarith, has made the same claim publicly. This position is not credible. The radio and television bands have empty space. Only a political decision stands in the way of fair and equal access to the media. Without equal access to the operation of television and radio stations, it will be impossible to create a neutral political environment.

53. In its resolution 51/98, the General Assembly welcomed the proposed measures whereby the security forces would remain neutral during the election campaign. This is one of the most important issues in the pre-election period. The duty of any member of the armed forces must be first and only to the State, not to a political party. The military, gendarmerie, police and other security forces must remain truly neutral to allow candidates, political party members and the public to participate in an atmosphere free of violence, intimidation and coercion.

54. The Special Representative welcomed the April 1997 initiative of the co-Ministers of the Interior and Defence, the co-Chiefs of Staff of the Royal

Cambodian Armed Forces, and the Director and Deputy Director of the national police in publicly stating their neutrality and the neutrality of the forces under their command. He encouraged further steps to reinforce this message through the chain of command, and swift disciplinary action for persons violating that norm. He also expressed support for the provision of the draft law on political parties, which would bar active members of the armed forces from holding positions in political parties. In September 1997, the National Assembly adopted a law on the general statute for soldiers of the Royal Cambodian Armed Forces which prohibits soldiers from serving the interests of any political parties. The Special Representative expresses the hope that these positive initiatives do break the unfortunate tendency by both major parties in the past of using security forces in a partial manner. The violent actions in July 1997 demonstrated a flagrant disregard of the principle of military impartiality. Key units of the police, the armed forces and the gendarmerie were at the forefront of the confrontation. It is crucial that the security forces are politically neutralized well before the election campaign.

55. In conclusion, the Special Representative urges the Government to complete its election preparations by agreeing on an appropriate legal framework, establishing an election commission that is clearly independent, taking legal and political steps to establish the Constitutional Council, creating guarantees that would give the political parties equal opportunities to express themselves via the media, demobilizing and disarming the armed troops of political parties, and ensuring political neutrality by all military and security forces. The security and safety of candidates and political activists must be ensured, including those returning from exile. Previous violent attacks should be seriously investigated and those found responsible should be punished. Property vandalized or stolen from political parties in early July should be restored, and a fair solution given to disputes among factions over party names and symbols. Neutrality of the judiciary in cases relating to party politics must be established and previous sentences and prosecutions in such cases impartially reviewed. A general environment should be created in which there will be the appearance and reality of genuine security of persons and rights of association, assembly and expression, all of which are necessary for free and fair elections.

56. The Special Representative commends the efforts of Cambodian non-governmental organizations and private citizens to play an active role in voter education, election monitoring and other election support activities. The two main groups, COMFREL and COFFEL, are composed of organizations and individuals with experience from their participation in the elections conducted by the United Nations Transitional Authority (UNTAC) in Cambodia in 1993. Such outside poll watching and electoral support groups can play a significant role in ensuring a free and fair electoral process.

C. Civil rights and the administration of justice

1. Problem of impunity

57. A most crucial challenge in the establishment of the rule of law in Cambodia is the problem of impunity. The problem is both political and institutional. Impunity in this case means that those persons who commit human

rights violations, in particular members of the military, police, gendarmerie and other armed forces, are not arrested or prosecuted even when their culpability is well known to the authorities and the general public. This situation causes a grave loss of faith in the system and administration of justice, and undermines the moral authority of the courts and thereby also the Government.

58. Unfortunately, in spite of widespread agreement among political leaders and official statements to the Special Representative by the two Prime Ministers and the Ministers of Defence, the Interior and Justice, no progress has been made in the repeal or amendment of article 51 of the 1994 Law on Civil Servants. This section of the law provides that, except in cases of flagrante delicto, no civil servant may be arrested or prosecuted for any crime unless the Government or the concerned Minister consents in advance. The Council of Ministers has made it clear that this provision also covers military and police personnel. Article 51 contravenes the basic principle of equality of all persons under the law and creates a climate of lawlessness in which persons in the police or military are not held accountable for their acts, even when such acts include murder, rape, robbery or arson. These provisions have effectively shielded human rights violators within the Government from prosecution. This is a serious derogation of the rule of law and may encourage police, military and security or administrative officials to continue to commit abuses in the knowledge that they are not likely to be prosecuted.

59. The problem of the continued widespread human rights violations by military and police personnel with impunity is deemed by the Special Representative to be one of the most central obstacles to the gradual establishment of the rule of law in the country. The Special Representative received reports of numerous incidences of summary executions, torture and rape of civilians by military personnel in the province of Battambang. Most of these crimes were perpetrated outside the context of combat. In very few cases have the perpetrators been brought to justice or otherwise sanctioned or disciplined by their superiors.

60. The provincial tribunal in Battambang has often expressed its frustration over the difficulty in prosecuting military or police offenders, in spite of the evidence that they are responsible for most of the human rights violations in the provinces and of the criminal offences dealt with by the court. Members of the tribunal have been subjected on several occasions to threats, including death threats, and intimidation by both the military and the police. The provincial tribunal has conducted a number of trials in absentia for serious crimes involving military and police personnel over the past two years. None of the verdicts have been implemented. The police and the gendarmerie have not cooperated with the court when it comes to the execution of court orders.

61. The Special Representative feels compelled to emphasize in this latter respect that the gendarmerie was formally established in 1994 principally to remedy the problem of the reluctance of the regular police to investigate crimes, carry out arrests and execute court orders in cases involving military personnel. This is why it was given judicial police powers, in addition to its mandate as military police. Growing evidence of its nationwide activities shows that not only is this force failing to fulfil its judiciary police and military police mission, but it is increasingly becoming an agent of human rights abuses,

enjoying the same impunity as the other security forces. It was also one of the most active of the armed forces deployed in early July 1997. The Special Representative regrets that the human rights training provided by the Cambodia Office to the gendarmerie has obviously yielded little positive result. He believes that unless the gendarmerie is strictly and effectively brought under the rule of law and made to observe strict neutrality when carrying out its mandate and to demonstrate its professional effectiveness, it should be dismantled.

62. The Special Representative welcomes the fact that the new law on the general statute for soldiers of the Royal Cambodian Armed Forces contains no provision similar to article 51.

63. The most serious human rights violators in Cambodia in recent history have been the members of the Khmer Rouge. When the country was known as Democratic Kampuchea, the official name of the Khmer Rouge State from 1975-1979, an estimated 1.7 million people were killed, or died from disease, forced labour and hunger. The Khmer Rouge is responsible for widespread atrocities, including massacres, executions of civilians and foreign nationals, and torture even after 1979.

64. No Khmer Rouge leader has been arrested or prosecuted by the Cambodian authorities. None of them has ever admitted guilt or even apologized to the Cambodian people for his or her actions. The Special Representative is concerned at the prospect of current and former Khmer Rouge leaders being allowed to participate in the political process without their personal responsibility for the killings of the 1975-1979 Khmer Rouge regime being clarified. Without accountability of the Khmer Rouge leaders, the cycle of impunity in Cambodia will continue. Rendering answerable before the court those of the Khmer Rouge leadership against whom there is evidence of widespread abuses may restore some public confidence in official justice.

65. For these reasons, the Special Representative warmly welcomed the letter of the co-Prime Ministers dated 21 June 1997, in which they requested the assistance of the United Nations and the international community in bringing to justice those persons responsible for the genocide and/or crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979. This letter was sent in response to resolution 1997/49 of 11 April 1997 of the Commission on Human Rights, in which the Commissin had requested the Secretary-General, through his Special Representative for human rights in Cambodia, in collaboration with the Centre for Human Rights, to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability.

66. In their letter, the co-Prime Ministers stated that Cambodia did not have the resources or expertise to conduct a procedure of that significance. Thus, they believed it was necessary to ask for the assistance of the United Nations. They stated that they were aware of similar efforts to respond to the genocide and crimes against humanity in Rwanda and the former Yugoslavia, and requested that similar assistance be given to Cambodia.

67. The Special Representative strongly urges the United Nations and its Member States to respond positively and generously to the above-mentioned request, which is no less important after the violent events in July 1997 than it was before. To address the problem of impunity, it is important that the most serious violators of human rights in Cambodia are brought to justice under international law. The co-Prime Ministers stated in their letter that they believed that crimes of this magnitude were of concern to all persons in the world, as they greatly diminished respect for the most basic human right, the right to life. They expressed the hope that the United Nations and the international community could assist the Cambodian people in establishing the truth about the period 1975-1979 and in bringing to justice those responsible. Only in that way could the tragedy be brought to a full and final conclusion.

68. As a first immediate step, the Special Representative recommends that the Secretary-General be authorized to appoint experts to evaluate the existing evidence of responsibility for the Khmer Rouge human rights violations. The Special Representative raised this issue again in September with each of the two signatories of the 21 June letter, Prime Ministers Ranariddh and Hun Sen, as well as with King Sihanouk. All three declared their support for the proposal.

2. Rule of law and independence of the judiciary

69. The lack of independence of the judiciary and the problems related to the administration of justice continue to be of major concern to the Special Representative. The continued absence of basic institutions called for by the Constitution remains a serious problem.

70. The Constitutional Council, the body designated by the Constitution to determine the constitutionality of legislation and to decide contested cases in the election of members of the National Assembly, has still not been formed. The members are to be appointed by the King, the National Assembly and the Supreme Council of Magistracy. Only the King has submitted a list of nominees. A draft law on the Constitutional Council was prepared by the Cambodia Office and submitted to the Government for its consideration in June 1997. This law should be included as part of the legislation related to the election, which may be considered in late 1997. The lack of a Constitutional Council means that there is no legal forum to determine the constitutionality of various legislative enactments, including any election law or political party law. This seriously undermines both the reality and the appearance of the rule of law in Cambodia.

71. In spite of repeated suggestions by the Special Representative and others, the Supreme Council of Magistracy, at the time of writing of this report, has still not been convened owing to a dispute between CPP and FUNCINPEC over its composition. All governmental officials, members of the National Assembly and representatives of non-governmental organizations whom the Special Representative has met agree that an independent Supreme Council of Magistracy should start functioning at the earliest possible date. Without the Supreme Council of Magistracy, reform of the judiciary will be stalled and new appointments of judges and prosecutors will not be possible.

72. There is still no law on the status and functioning of the judiciary. This law, which has not been drafted, would address issues such as the roles of trial judges, investigating judges, prosecutors and clerks, training of judges, membership in political parties, conflicts of interest, ranks and salaries. Without such a law the legal basis for the entire Cambodian judiciary remains unclear.

73. The Special Representative again commends the open and active cooperation of the Ministry of Justice with international efforts to train and increase the capacity of the judiciary. Through the judicial mentor programme of the United Nations High Commissioner for Human Rights and the Cambodian Court training project of the International Human Rights Law Group, judges, prosecutors, clerks, police, prison authorities, military police and local officials receive training and advice about human rights, domestic law and the role of the judiciary. The Special Representative encourages continued donor support for these valuable long-term programmes of institution-building, as well as for the physical reconstruction of Cambodia's dilapidated court buildings.

74. Article 109 of the Constitution states that the judiciary is independent. An independent judiciary is the cornerstone of a society that respects human rights. The Special Representative appreciates and endorses the provision in the draft law on political parties that prohibits members of the judiciary from membership in political parties. This would be an important step in depoliticizing the judiciary.

75. At present, virtually all judges and prosecutors in Cambodia are members of CPP. The Special Representative is concerned by numerous reports of a lack of judicial independence. For instance, in November 1995, the former Minister of Finance, Sam Rainsy, was expelled from FUNCINPEC. Mr. Rainsy filed a complaint with the Phnom Penh court alleging that his expulsion was illegal. The court refused to consider the case, explaining that this was an internal party matter beyond the competence of the court. Yet the court made the opposite decision in a similar case in April 1997. In that case, Toan Chhay and three others with positive relations to CPP filed complaints with the Phnom Penh court after being expelled from FUNCINPEC. Unlike the Sam Rainsy case, the court issued an injunction suspending the expulsions. No grounds were offered for the different decisions.

76. Another such report relates to the conviction of Chau Sokhorn, a FUNCINPEC Colonel in the gendarmerie, for alleged involvement in drug trafficking. The case began after approximately 700 kilograms of marijuana were discovered in Kompong Som port in April 1997. The containers were in the name of a prominent businessman openly associated with CPP. Immediately after the case became known publicly, and before a full investigation, the Director-General of the national police, who is a CPP appointee, publicly exonerated the businessman and accused FUNCINPEC of planting the evidence. Chau Sokhorn was arrested and, in an irregular procedure, was sent to Phnom Penh for trial. In this particular case, it was decided that article 51 of the Law on Civil Servants did not apply. On 27 June 1997, Chau Sokhorn was sentenced to 15 years in prison. During the trial no evidence proving his guilt was offered. Witnesses who had previously given statements in the case testified that they had been coerced into making the statements.

77. Another case of suspected political use of the judiciary is the request of the military court in late June and early July 1997 for the immunity of First Prime Minister Ranariddh to be lifted so that he could be prosecuted for illegal importation of weapons. Under Cambodian law, the military court has no jurisdiction in such a case. In fact, the charge was brought under the ordinary criminal law.

78. The most recent example was the political trial on 9 September of Srun Vong Vannak, the security chief of KNP, who was sentenced to 13 years in prison by a Phnom Penh tribunal. He was accused of organizing, on behalf of KNP leader Sam Rainsy, the murder of Keo Samouth, an official at the Ministry of the Interior and a relative of the Second Prime Minister. Keo Samouth was gunned down by an unidentified assailant on 19 November 1996, while coming out of a restaurant in Phnom Penh. Srun Vong Vannak was implicated in the murder by one of the two co-defendants at the trial, Sos Kasem, who was himself sentenced to 15 years in prison. Srun Vong Vannak was illegally arrested on 14 February 1997 by the Phnom Penh municipal police and held incommunicado and illegally in various unlawful places of detention in the capital for 17 days. During this period of illegal detention, he claimed to have been forced by the police, including by threat of execution, to confess that he had been ordered by Sam Rainsy to kill Keo Samouth. After he confessed, the police took him to court on 3 March 1997. There, he retracted his confession which he claimed had been made under duress. The trial fell short of the most elementary procedural requirements for fairness. The verdict appeared to have been prepared before the trial. This is the only murder case with political implications in which the Government has arrested and prosecuted someone.

79. These cases and others tend to validate the complaints from many quarters, including some made by judges, prosecutors and court officials in private, of political bias in Cambodia's judiciary. It is vital that political parties immediately cease any form of interference or pressure on the judiciary, otherwise the already low public opinion and confidence in the judiciary will continue to suffer.

80. Also of concern is the continued interference of local authorities in judicial matters. A case in point is the 2 November 1996 action by Chhoeung Sokhom, the Chief of the judicial police in Beanteay Meanchey province, who stormed the provincial prison with 30 heavily armed police officers and an armoured car in order to release a police officer who had been arrested for beating and threatening to kill his wife. Chhoeung Sokhom later threatened the life of the prosecutor who had issued the arrest warrant. Since that time, Chhoeung Sokhom has continued to ignore the orders of the court and threaten violence if legal action is taken against any of his officers. In spite of reports by the court to the Ministry of Justice, no legal or disciplinary action has been taken.

81. There has still been no legal action taken against any of the perpetrators of armed attacks on Cambodian courts in the past three years.

3. Right to life, and protection against summary execution

82. On 22 August 1997, the Special Representative submitted to the Government a memorandum which detailed information that the Cambodia Office of the United Nations High Commissioner for Human Rights had obtained on cases of reported summary executions, disappearances and torture. The memorandum presented information about at least 41 cases of execution by security personnel of people connected with FUNCINPEC. Each case had been verified on the basis of more than one eyewitness testimony, as well as other corroborating evidence, such as photographs or documents, when available.

83. Most of these instances had occurred between 2 and 6 July and in the ensuing two weeks, although there were also some cases subsequently. In more than half of the cases, the victims had been identified by name, political affiliation and position. The circumstances of their execution had also been documented. In the other cases, it had not been possible to identify the victims by name but the conditions under which their bodies had been disposed of, found or exhumed indicated that they were executed in military or police custody.

84. Most of the victims had connections with the FUNCINPEC-related defence or security structures. One of the exceptions was Dok Sokhun, also known as Michael Senior, a Khmer-Canadian journalist who taught English in Phnom Penh. He was shot dead on 7 July after he had taken photographs of government soldiers looting houses near the Au Russei market. He was first shot in the leg by a soldier who took his camera. Another soldier then executed him with three bullets. His wife was an eyewitness to the murder. Another exception was Major Aek Eng of the Phnom Penh police, who was connected with CPP and who was seen to be arrested by FUNCINPEC soldiers on 6 July, together with four other policemen. He was executed on the spot with three bullets after having shown his police card. The other men escaped when fighting broke out but only after having been beaten and humiliated.

85. The Special Representative discussed these cases of summary execution during his visit in August-September 1997 with representatives of the Government. The Second Prime Minister said that the memorandum helped to clarify untrue rumours and to clear up confusion and had thereby contributed to stabilizing the situation. He furthermore stated that the memorandum provided an opportunity to take remedial measures. The Government will, he said, investigate all cases in the memorandum; those responsible would be brought to justice, and no one would enjoy impunity.

4. Protection against torture

86. During his third, fourth and fifth missions, the Special Representative emphasized the issue of torture and other cruel, inhuman and degrading treatment or punishment. Torture is prohibited under the Cambodian Constitution and Criminal Law. Article 38 of the Constitution provides that the law guarantees that there shall be no physical abuse against any individual and that coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. The article further

provides that confessions extracted under torture are not admissible as proof of guilt, and holds the perpetrator of torture punishable under the law. The same prohibition exists in the Cambodian Criminal Law (art. 12). Cambodia is also a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

87. There is evidence that torture during interrogation remains a widespread practice in Cambodia. In March 1997, the Special Representative visited the province of Battambang and there had an opportunity to verify with witnesses and human rights investigators and to discuss with relevant authorities the evidence of torture that he had received. Information obtained from political authorities and police, prison and court officials as well as from prisoners, defenders and non-governmental organizations, were analysed. A report was submitted during the June mission to the co-Ministers of Interior, the Minister of Justice, the Director-General of the national police, the acting Governor, the provincial Commissioner of Police and his Deputy. The Special Representative requested that an investigation be made into the cases mentioned and that strong measures be taken to put an end to the practice of torture during interrogation. He was promised a response before August but no communication on this matter has so far been received from the authorities.

88. The above-mentioned report contains information on 32 individual cases of torture by police personnel in Battambang province between May 1996 and March 1997. The majority of the cases relate to the provincial anti-terrorist police, to the Battambang Provincial Police Commissariat and to one particular police station in Svay Por district, the Battambang municipal police station. The Special Representative visited the station in Svay Por in March and met the local Police Chief. In particular, he raised the case of 34-year-old Hum Hann who had died during interrogation in the police station on 9 May 1996. The Police Chief proposed that the prisoner had committed suicide but the description of how the hanging had taken place was less than convincing and the investigation that had been undertaken less than impartial. The Special Representative suggested in June to the co-Ministers of the Interior, the Minister of Justice and the Director-General of the national police that an impartial investigation be undertaken as a matter of routine for every case of death in custody, and that forensic expertise be included in such investigations.

89. Another case raised referred to Lam Heung, a Vietnamese woman aged 48, who was accused of theft with no evidence. After arrest she was brought to Svay Por police station where she was robbed of her belongings, deprived of food, severely beaten and threatened with execution. She "confessed" in front of the prosecutor out of fear of being beaten again. Despite serious bleeding on her legs she received no medical treatment. During the trial, her testimony about torture during the trial was rejected on the grounds that she had admitted her guilt to the prosecutor.

90. The practice at Svay Por police station as reflected in the dossier is that interrogation is organized by teams of six policemen. Methods include beatings with fists, feet or bamboo or wooden sticks on various parts of the body, including the head, back, chest, sides and legs; slappings in the face or simultaneously on both ears; near strangulation with a kramma; and hits to the

head or face with a handgun or on the sides, chest or back with a rifle butt. Threats of torture or execution are reported in several cases.

91. The reported torture at the Svay Por police station has occurred during the first 48 hours after arrest. This is the maximum legal delay beyond which no one may be detained without authorization from the prosecutor. In practice, this delay is rarely respected by the police. It seems that police officers consider that they have full and exclusive authority over persons in their custody. They usually reject requests by defence lawyers or defenders to meet arrested persons. The absence of control over the conduct of the police interrogators during the first 48 hours facilitates the occurrence of torture and other abuses of power by the police investigators. A contributing factor is the misunderstanding among many policemen that the only important or credible evidence in court is a confession and that the police have only two days to produce that evidence.

92. A number of incidents of torture were also reported to the Special Representative in July 1997. On 8 and 9 July, 33 FUNCINPEC soldiers were arrested and taken by paratroopers to Regiment 911 in Udong district. They were detained there for 10 days under severe conditions in a closed room so small that all of them could not sit down simultaneously, much less lie down. Their appeals to the guards for the door to be opened to allow them to breathe met with no response. After the second day of detention, the interrogation began under which most of the detainees were tortured. They were threatened that they would be killed by having their throats slit. If they did not confess or provide certain information they were then beaten with a belt or a wooden plank, kicked or punched. One detainee, the only one identified as an officer in that group, never returned after being taken away for a second round of interrogation. He was extrajudicially executed by soldiers of Regiment 911.

93. Ten days after their release, several of the remaining 32 soldiers still had visible signs of torture on their bodies. The Special Representative has studied photographs which corroborate their testimonies. The soldiers told United Nations staff members that the interrogators seemed uninterested in ascertaining the truth and instead wanted to obtain certain responses. For instance, if the soldiers said that they were not Khmer Rouge, they were tortured until they "confessed". They also testified that their interrogators showed clear signs of being influenced by alcohol.

94. Torture is clearly forbidden in Cambodia and there are some important legal safeguards, such as article 10 of the Cambodian Criminal Law which states that no one may be detained for more than 48 hours without access to counsel, an attorney or other authorized representative. The lack, however, of detailed provisions relating to the punishment of acts of torture, the absence of a law on evidence, the weaknesses of the judiciary and the paucity of material and human resources available to the courts, the pervasive fear of prosecuting powerful or protected offenders, the lack of mechanisms within the police force for superior officers to control the activities of their subordinates, the abuse of power to arrest and interrogate and the inability of the courts to prosecute because of a system of institutionalized impunity owing to article 51 of the Civil Servants Act, have all contributed to a situation where the law is made ineffective. The eradication of torture requires a clear and determined

position of the political leadership of the country. A first step is to react upon receiving credible reports of cases of torture.

5. Prison conditions

95. In 1995, the Cambodia Office of the United Nations High Commissioner for Human Rights issued a report on the state of Cambodia's prisons. In the first paragraph of the report, it was stated that Cambodia's prisons were in a state of crisis, that penal administration was in disarray, that prison buildings were in many cases literally falling down, that medical care was often non-existent and that disease and malnutrition were rampant. Unfortunately, two years later, the situation is worse.

96. Most prisons report that they receive operational funds very late. Delays of three months or more are common. With no governmental support, prison directors have to borrow funds to operate the prisons at high rates of interest. Interest is then repaid when the prisons finally receive their allocations. In some prisons, the debts have become so large that local moneylenders now refuse to lend any more money to the prison director. Prison staff report that they must come to Phnom Penh to receive the monthly allocation. Once inside the Ministry of the Interior, they must obtain more than five signatures to receive the funds. Often, they must pay bribes to staff of the Ministry of the Interior before the signatures can be obtained.

97. Lack of funds means that prisoners often go hungry, medical problems develop and guards do not get paid on time and do not come to work. With fewer guards present, hungry and desperate prisoners attempt more escapes. Even prisoners with only one or two months left to serve have recently attempted to escape. Between January and June 1997, at least 21 attempts led to the escape of more than 60 prisoners. This is an alarming increase and reflects the desperation of the prisoners. Many have been shot and killed or wounded.

98. Late delivery of funds has been a long-standing problem which has been brought to the attention of the Government by the Special Representative on many occasions. While a new system of multiple-month allocations was to start in March 1997, it has not yielded significant results. The Special Representative continued to raise this issue with officials of the Ministry of the Interior.

99. According to prisoners, health-care workers and prison officials, the biggest problem in the prisons is the lack of adequate, nutritional food. Most meals are a mixture of a small amount of white rice and a thin soup of vegetables. Sometimes a small amount of fish or meat is provided. In many cases, the food situation has become so desperate that the World Food Programme (WFP) has had to make emergency shipments of food to avoid starvation. The Programme strongly objects to taking on this core governmental responsibility and only does so temporarily on humanitarian grounds.

100. The Special Representative has received many and regular reports of sick prisoners receiving little or no treatment. Some have died from treatable diseases, such as tuberculosis. This is unnecessary, as prisoners have been formally included in the national tuberculosis programme funded by the World

Health Organization (WHO). Other prisoners are so weak with beri-beri that they are unable to stand up or walk. In spite of the suggestions of the Cambodia Office, WHO and Cambodian non-governmental organizations for improving the coordination between the Ministry of Health and the Ministry of the Interior on prisoner health issues, in most prisons medical care is inadequate or non-existent. In most provinces, the assigned medical staff either come to the prison on an irregular basis or not at all.

101. The Government announced in July 1997 that, owing to revenues being significantly lower than expected, the budget allocated to certain ministries such as the Ministry of the Interior had been decreased. The Special Representative fears that this will have severe repercussions on the Prison Department. He urges the Government to fulfil its responsibility in feeding prisoners.

102. The Special Representative has received very reliable information that many prisons have released convicted criminals on permanent sick leave in exchange for bribes. In fact, the released prisoners were not sick. Such illegal releases could not have occurred without the agreement of some of the officials concerned, such as the prison director, the prosecutor or judge, the police chief or even the provincial government.

103. One case involving the unlawful release of 18 prisoners in Pursat province has already been confirmed by the Ministry of Justice. One of the released prisoners has been seen working as a police officer in a nearby town. The Minister of Justice took swift action and removed the prosecutor who had been implicated in the corruption. No action has, however, been taken against the prison officials or others within the control of the Ministry of the Interior.

104. A similar case occurred in Takeo province, in which 11 convicted murderers were released. The Special Representative has received other, unconfirmed reports from other provinces, including Battambang and Kompong Chhnang.

105. The Special Representative is particularly alarmed by recent reports that prisoners attempting to escape, or even after recaptured, have been intentionally shot by prison guards when they were posing no threat to the guards. This has occurred at least in Kompong Thom, Kompong Som and Siem Reap. In Kompong Thom, a woman who had attempted to escape but had already given up was shot in the thigh by a guard. Also in Kompong Thom, one man was shot and killed after waving a stick at a guard with an AK-47. In Kompong Som, a prisoner was shot three times while attempting to escape. Local prison officials insist that the bullets ricocheted into the man. This is simply not credible. In Siem Reap available evidence suggests that one prisoner was executed upon capture.

106. While the Special Representative understands the need for prison guards to use force in self-defence, prison guards must be instructed not to use lethal force to recapture an escaped or escaping prisoner unless it is to prevent the loss of another life, including their own.

107. One of the most important improvements in the prison system in recent years has been the end of the use of shackles and dark cells. Since May 1997,

however, prisoners in Kompong Som have been shackled after an escape attempt created a hole in the exterior wall. This is unacceptable. It is the responsibility of the Government to provide funds on an emergency basis to solve such problems. Alternatively, the prison must increase the number of guards to secure the facility. In no case is it appropriate to shackle a prisoner because of problems with facilities. The Special Representative has also received reports of the use of a metal cage to hold prisoners in Stung Treng and possible other provinces. This is, by definition, cruel and degrading punishment and should be discontinued immediately.

108. The Special Representative commends the co-Ministers of Interior for ordering the removal of the Koh Kong prison director, who had allegedly raped a female inmate in early 1997. As at July 1997, however, this person had not officially left his post and no criminal charge had been made against him.

109. There are no prison regulations in Cambodia. Many of the problems in the prisons could be resolved by the adoption of clear rules. Prison regulations would set basic standards for food, health care, discipline and prison administration. The Cambodia Office has worked with the Ministry of the Interior on draft regulations for almost three years and remains ready to assist. In addition, the Cambodian criminal justice assistance project financed by the Australian Agency for International Development (AusAID) has made experts available to assist the Ministry of the Interior.

110. The Special Representative greatly appreciates the assistance of WFP in providing emergency food to hungry prisoners. Without this assistance, it is likely that some prisoners would have died. The Special Representative also commends many Cambodian non-governmental organizations for their work on prisons. In particular, he commends the ongoing prison programme of the Ligue cambodgienne pour la protection et la défense des droits de l'homme (LICADHO), which includes a medical team and assistance in emergency food deliveries. In June 1997, LICADHO also produced an excellent report on prison conditions which is consistent with the findings of the Special Representative.

111. The Special Representative recommends that the co-Ministers of the Interior use their authority to improve radically the prison conditions. The bureaucratic process for payments should be shortened, in particular by ending the practice of requiring the prison staff to come to Phnom Penh each month to collect funds. Instead of monthly requests made by the local prison director, funds should be allocated in advance on an annual basis, corresponding to the amount spent in the previous year. Adequate food must be provided to meet the nutritional needs of prisoners. Basic medical care should be guaranteed and a procedure established to investigate all cases of death or injury of escaped prisoners, and appropriate disciplinary and criminal action should be taken, where appropriate. Intentional shooting of an unarmed person is murder, even if the person using the gun is a police officer.

112. Finally, the release of convicted prisoners on false sick leave is a serious problem affecting public safety and the rule of law. These cases should be investigated seriously and appropriate disciplinary and criminal action taken against the perpetrators.

D. Economic and social rights

1. Economic rights

113. The Special Representative has emphasized the importance of economic and social rights in the course of his missions. Although it has great potential and natural resources, Cambodia is a poor country. In fact, widespread and extreme poverty is a most serious human rights problem. This is reflected in basic indicators of living standards.

114. Almost half of the population lives below the poverty line. The most recent annual UNDP Human Development Report indicates that just over one half of the population has access to health services and only 36 per cent have safe water. Life expectancy is estimated at 52 years. It is also reported that 40 per cent of children under five are undernourished. These data reflect a situation where economic and social rights are ignored on a large scale.

115. Environmental problems are on the increase. Poverty is one of the root causes but another major factor is the unsustainable logging that has damaged soil and water resources. This in turn undermines the livelihood possibilities for poor people in some farming areas. Another major problem, which the Government has recognized, is the imbalance between urban and rural areas in relation to investments and growth of income. This gap contributes to social injustice.

116. The Cambodian economy is still in transition to a market economy and faces problems related to such change. The development of a legal and institutional framework to support this transition has been lagging behind. Other legacies from the past relate to previous wars and periods of political terror. Landmines and unexploded ordnance are still causing death and injury, as well as economic and social hazards, in large parts of the country. Educational and health services were so badly damaged during the period 1975-1979 that they had to be rebuilt from the ground up. The educated people so important in the provision of these services and in the administration as a whole were killed in large numbers by the Khmer Rouge.

117. It must, however, also be pointed out that an unfortunate element of corruption has developed within the Cambodian administration. The Special Representative has noted the negative impact of corrupt practices within the system of justice and in the prison administration. In these areas, there is a direct connection between corruption and human rights problems. In all sectors, corruption drains the country of resources much needed to enhance the economic and social rights of the Cambodian people. For instance, most of the income from logging has been diverted into private pockets. In his area of concern, the Special Representative has been disappointed that no effective measures have been taken by the Government to address the phenomenon of corrupt practices.

118. In the midst of all these problems, the Special Representative has encountered hard working, dedicated officials, teachers and others who contribute greatly to the development of Cambodia. International cooperation will be important for several more years and the Special Representative pays tribute to UNDP, the United Nations Educational, Scientific and Cultural

Organization (UNESCO), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Children's Fund (UNICEF), WFP and other international agencies supporting Cambodian development with human and financial resources.

2. Right to education

119. Cambodia became a Party to the International Covenant on Economic, Social and Cultural Rights and to the Convention on the Rights of the Child in 1992. It has therefore demonstrated its commitment to the realization of the right to education in Cambodia, as required by the two Conventions.

120. The Cambodian Constitution provides for the realization of the right to education. Article 65 stipulates that the State shall protect and upgrade the rights of citizens to quality education at all levels and article 68 states that the State shall provide free primary and secondary education to all citizens in public schools and that citizens shall receive education for at least nine years. These provisions are far from having been implemented. Serious problems continue to exist in relation to the access to schools, as well as to the quality of education.

121. According to official statistics for the biennium 1995-1996, there were 4,845 primary schools, with 40,691 classes; 38,788 teachers, 11,442 of them female; and 1,805,631 pupils, 803,358 of them girls. On average, there were 46.6 pupils per teacher and 44.4 per class.

122. Primary school enrolment was characterized by an under-representation of girls who constituted 44.3 per cent of all pupils, with differences among the provinces. While the enrolment of girls is relatively high in urban areas, it is low in rural and minority areas. The Government needs to develop strategies to ensure the enrolment of girls in grade one. The enrolment rate in lower secondary schools was 29 per cent. In the upper secondary schools, enrolment was 9 per cent.

123. Both the repetition rate and the drop-out rate are high: 31.3 per cent (girls, 13.8 per cent) and 11.9 per cent (girls, 6 per cent), respectively. With regard to both rates, there are large variations among the provinces. Of those starting first grade in 1989, about 34 per cent began fifth grade in 1994. According to UNICEF, in 1996 the average age of first graders was around nine years, and it is not unusual to find 16 to 17-year-old students in fifth grade.

124. The Government allocates only 8 per cent of its budget for education, almost all of which is spent on salaries. Forty per cent of the funds available to the educational sector comes from international aid. School infrastructure and training materials are dependent upon donations. School buildings are often dilapidated, sometimes even dangerous. Children are often crowded into small, hot rooms on narrow benches. Water and sanitation are often unsatisfactory in schools. Sometimes the road to and from school raises serious security concerns. Although free in principle, the real cost for the compulsory uniform, extra tuition, school materials, food and transportation is high for poor

families. Poor nutrition among students is also an important hindrance to good achievements.

125. The average teacher in Cambodia has a somewhat limited education. It is estimated that less than one per cent of teachers have completed the eleventh grade. About 60 per cent of the teachers have only completed lower secondary school. Teachers limited in training do not possess the basic skills to teach mathematics, Khmer and the social sciences. Classes are typically very formal, with one-way communication and strong teacher direction, leaving very little room for questions and group discussions. Teacher training colleges have technical, organizational and logistical problems that urgently need to be addressed. Improved training of teachers is a very urgent need.

126. Like other public service employees, teachers are poorly paid (US$ 15-20 per month) and therefore have to resort to additional jobs to be able to support themselves and their families. Often teachers offer extra teaching hours against payment.

127. The number of teaching hours is insufficient. Usually, a teacher's actual contact with primary school pupils is less than three hours per day. Schools work in at least two shifts per day and there is a high number of scheduled and unscheduled days off. This results in 544.5 teaching hours per year, which is 66 per cent of the time required for teaching the official curriculum.

128. Adding to the lack of educational standards is a strong element of corruption, in particular in secondary and higher education, in relation to the examinations and diplomas. This is unfair to poor students but it is also a cause of concern that students can obtain access to professions of high responsibility without the necessary knowledge and skills.

129. A clear institutional bias exists against girls, poor children, children in remote areas, disabled children, and children of minority and indigenous peoples. The Ministry of Education has no plans to provide adequately adapted education to children of minority groups and indigenous peoples, which will take into account their language, culture, historical background and the specific life skills needs. This lack of special measures may lead to the alienation of these children from their communities and to the loss of cultural diversity in Cambodia.

130. Also important for Cambodia is the development and implementation of nationwide basic education to enhance adult literacy and numeracy. Such efforts are essential to build an adequate workforce, improve the health of the people, reduce infant mortality, improve children's learning and increase agricultural and other productive capacity.

131. The Special Representative welcomes the decision of the Government to increase its budget allocation to education to 15 per cent. The cost-effectiveness of the educational programme should, however, also be improved and better use should be made of teachers who at the same time must be better paid. Better and more use must also be made of school premises, to which the concept of cluster schools, and sharing of pedagogical, logistical, financial and administrative capacities and resources can greatly contribute.

132. The Special Representative welcomes the development of new curricula and the production of new and better textbooks. The cooperation between the Government and UNICEF, UNESCO, the Asian Development Bank, the Programme d'appui au secteur de l'education primaire au Cambodge, the Cambodia Assistance to Primary Education programme and many non-governmental organizations is important. There seems, however, to be a need for better coordination among all of these organizations under the auspices of the Ministry of Education, Youth and Sport, in order to ensure the efficiency, effectiveness and sustainability of all programmes undertaken.

133. The Special Representative especially encourages the integration of human rights education, including the learning of such basic values as tolerance, gender respect, democracy, peaceful resolution conflict and non-violence in all school programmes at all levels.

134. The Special Representative recommends, in accordance with article 29 of the Convention on the Rights of the Child, that education be aimed at encouraging the development of the personality, talents and mental and physical abilities to their fullest potential; development of the respect for human rights and fundamental freedoms; development of respect for one's parents, cultural identity, language, values and country and those of others; preparation for a responsible life in a free society in the spirit of understanding, peace, tolerance, equality of the sexes and friendship among all people; and development of respect for the natural environment.

3. Labour rights

135. The new Labour Code, adopted by the National Assembly in January 1997, is a comprehensive and progressive law which codifies a number of international standards relating to labour rights. The public sector, including teachers, health workers, the police, the military and the judiciary, is, however, excluded from its application, and for domestic workers, and railway and airline employees, only its provisions relating to trade union rights apply.

136. The law is complex and its implementation will largely depend on the work of labour inspectors. In reality, the number of labour inspectors is inadequate, they have insufficient training and are easily corruptible because of their low salaries. Provincial inspectors themselves complained of a lack of means to cover the transportation costs required for monitoring working conditions, and feel unprotected from employers who sometimes resort to force to prevent them from entering company premises.

137. The law does not provide a minimum wage, which is left to the Ministry and may vary in each province. Neither does it ban the widespread practice of application fees, forcing applicants to pay up to the equivalent of six months' wages just to be recruited, offering them no safeguard against early dismissal. The law also does not respect privacy rights of workers, since it states that the work identity card shall show each hiring and dismissal, as well as salary and salary increases.

138. The law does not provide for sick leave or leave for marriage, paternity, bereavement or other personal or family reasons. Work-related illnesses or disabilities are not defined. Neither does the law specify what is a valid reason for dismissal. Concrete health and safety regulations, like norms for access to drinking water, clean sanitation and protection against fire, dust, chemical and biological agents, are left to ministerial regulations which to date do not exist.

139. Industrial investors confirm that the low cost of the Cambodian worker is one of the most appealing factors for investing in Cambodia. The Special Representative expresses his concern that however much Cambodia may wish to develop its economy, it should not be done at the cost of basic labour rights, which are there to safeguard the dignity and a decent living standard of the workers and their families. The recent strikes and demonstrations of workers resulted from systematic violations of basic labour rights.

140. Forming and joining trade unions is a constitutional right. The new Labour Code guarantees, without distinction, the right to organize unions without previous authorization, and stipulates a simple registration procedure: unions must submit their by-laws, a list of union officers and a copy of the union charter. Furthermore, the union shall be considered to be founded, if the Ministry gives no negative response, within two months. A regulation of the Ministry of Labour of 4 April on the registering of labour unions has, however, required certificates of good conduct (i.e. no criminal record) from the Ministry of Justice for all of the union officers.

141. So far the Ministry of Labour has denied recognition to seven eligible labour unions that fulfil all requirements according to the law, such as the Free Trade Union of Workers of the Kingdom of Cambodia, the Free Independent Democratic Trade Union of Sam Han Workers, the Workers Union for Economic Development, the Free Independent Trade Union of Ming Cheong Workers and the Labour Union of Gold Kaminvex Workers. The lack of recognition has, however, not stopped the unions from functioning. Unions, such as the Free Trade Union of Workers of the Kingdom of Cambodia, were successful in obtaining higher wages and limited working hours in negotiations with employers in several factories.

142. The Special Representative recommends that all labour unions that qualify be immediately recognized, that the Government enforces labour inspection and carefully studies the demands and concerns of the unions, and disseminates clear information on the Labour Code, labour rights and collective bargaining to all workers in Cambodia.

143. According to the Khmer Women's Voice Centre, women make up 60 per cent of the agricultural work force, 75 per cent of the industrial work force (90 per cent in garment factories), 85 per cent of commercial workers (including the informal sector), 60 per cent of other service sector workers, and 35 per cent of governmental sector employees. Over 80 per cent of Cambodian women are illiterate (compared to 50-60 per cent of men).

144. The lowest paid jobs are usually performed by women, many of whom have two or more jobs and migrate between agricultural seasons. Widespread discriminatory practices against women include the hiring of young girls over

older women, dismissal because of pregnancy, lack of maternity pay, reduced overtime pay owing to a refusal to work overtime. According to UNICEF, 42 per cent of women have a debt in cash or in kind. Many indebted Cambodian women are forced into bonded labour, including indentured servitude and prostitution.

145. The new Labour Code violates human rights conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Cambodian Constitution, by offering poor protection to female workers. Problems include lack of protection against sexual harassment, exclusion of domestic workers from the application of the law, suspension of the labour contract during maternity, limitation of maternity pay to 50 per cent of the salary, and the fact that rice allocations and housing benefits are often foreseen only for male, and not female, agricultural workers. The Special Representative believes that such practices should be brought to an end and that the Government should undertake to provide literacy training and job opportunity programmes for women.

4. Rights of the child

146. Slave-like practices, child prostitution and trafficking have become a grave problem in Cambodia. In Phnom Penh alone, there are approximately 10,000 to 15,000 child prostitutes. Thirty-one per cent of all female prostitutes are aged between 12 and 17 years. Fifty per cent of the girls sold into prostitution are sold by family members and are virtually forced into it. Many of these prostitutes, as well as domestic workers, come from rural families which are lured by the money of brokers offering jobs described as honest and well paid.

147. During his fourth visit, the Special Representative met with the Non-Governmental Organization Committee on the Rights of the Child and two local non-governmental organizations active in the field of sexual exploitation. He also met children who had been victim of sexual exploitation.

148. The Special Representative welcomes the initiatives taken by the National Assembly Commission on Human Rights and Reception of Complaint on the problem of sexual exploitation and trafficking in Cambodia. In January 1997, the Commission requested the Minister of Justice to report on the implementation of the Law on the Suppression of the Kidnapping, Trafficking, Sale and Exploitation of Human Beings, adopted in January 1996, which includes criminal penalties for any person responsible for the purchase, sale or kidnapping of any person. In June 1997, the Commission released a report on the problem of sexual exploitation and trafficking in Cambodia, based on information from local authorities, non-governmental organizations and prostitutes in all provinces of the country.

149. The report states that, from 1993 to January 1997, at least 110 suspects were arrested and 56 people were sentenced by the authorities for trafficking-related offences. Three different laws had been used: article 42 of the UNTAC transitional criminal law, article 2 of Cambodia's anti-terrorism law, and the

new law on trafficking. According to a recent report of the Ministry of Justice, from October 1995 to January 1997, courts throughout the nation had received 43 trafficking cases, involving a total of 61 victims. Trials had been completed in 10 of the cases.

150. The Special Representative also notes that, since January 1997, two foreigners have been arrested in connection with the sexual abuse of minors. One of them had been sentenced at the time of writing of the present report.

151. The Special Representative also had several discussions with local non-governmental organizations active in protecting young girls from prostitution. Representatives of the non-governmental organizations expressed the view that cooperation with the police in Phnom Penh has improved, in particular since a workshop was organized to train the police chiefs and deputy chiefs of all the districts of Phnom Penh. A number of rescue operations have been carried on by the local police in cooperation with Cambodian Interpol and local non-governmental organizations. More and more often the police, on their own initiative, refer young girl prostitutes to the non-governmental organizations shelters. At the time of the visit of the Special Representative, 52 young prostitutes were present in the shelters, almost half of them brought by the police.

152. Nevertheless, prosecutions and convictions are still rare. The police and the court lack expertise in interviewing children and gathering evidence. In many cases, no prosecution is initiated because there is no complaint from the parents. Moreover, when persons are convicted, the penalties are generally so minor that they do not serve as a deterrent. The Special Representative regards the difficulties encountered by women and girls entrapped in prostitution in finding legal protection and redress as serious violations of the rights of women. The issue should be tackled with urgency as part of a comprehensive governmental programme which should also include, among other things, the high school dropout rate for girls and the under-representation of women at high levels in governmental bodies. The Special Representative will continue to monitor and raise these concerns on future visits.

153. The Special Representative is concerned about the continued and rapid spread of the human immunodeficiency virus (HIV) in Cambodia, mainly through prostitution. In one rehabilitation ward, no less than 10 per cent of the girls were HIV positive.

154. With regard to trafficking, information is still lacking. Non-governmental organizations complained that cooperation with Vietnamese authorities for both prevention and repatriation is difficult. Most of the Vietnamese children trafficked into Cambodia do not have any identification papers. The trafficking of child beggars to Thailand was also reported recently.

155. The Special Representative was also informed that, on 19 February 1997, with the cooperation of non-governmental organizations, the immigration authorities of Thailand and Cambodia and the Cambodian Embassy at Bangkok, the International Organization for Migration (IOM) offices in Thailand and Cambodia helped 67 women and children to return to Cambodia. They had been detained in the Immigration Detention Centre at Bangkok as illegal immigrants.

156. In June 1997, the Ministry of Interior adopted a decree, establishing the National Children's Rights and Child Exploitation Protection Commission, as a follow-up to the World Congress on Commercial Sexual Exploitation, held at Stockholm in 1996. In accordance with its mandate, the Commission will disseminate information on the protection of children's rights and other related principles for the protection of children to the relevant authorities, including the national police and with the public as a whole. Furthermore, it will cooperate with national and international organizations and non-governmental organizations in educational training on children's rights and the suppression of all crimes against children and their families. The Commission will also take measures to implement the laws and other regulations related to the protection of children from exploitation and child trafficking by cooperating with relevant departments, receiving and filing complaints, carrying out investigations and swiftly sending the perpetrator to the relevant competent authorities.

157. The Special Representative welcomes this initiative and expresses the hope that it will improve coordination between various ministries and the Cambodian National Council for Children in relation to issues of child rights.

158. Apart from the Youth Rehabilitation Centre at Phnom Penh, which is used to detain and re-educate street children, children rescued from brothels and delinquent but mainly unconvicted juveniles who have never seen a court, there are no separate detention centres for minors. In April 1997, Legal Aid of Cambodia, a local non-governmental organization providing free legal counselling, published an excellent report on incarcerated children in Cambodian jails. In almost every provincial prison, one or more children are in custody, not separated from adult and often more serious offenders. No effort is made to give them special attention or education.

159. Children growing up in prison with their convicted mothers is common in Cambodian prisons. Pregnant prisoners are only brought to the hospital hours before they deliver the baby and have to return to their cell a few days later. Female prisoners hardly ever have female guards.

160. The Special Representative recommends the creation of separate centres for street children, children who are victims of sexual exploitation and delinquent juveniles. The latter should also pass through the judicial system instead of being picked up at random by the police and transferred to the Youth Rehabilitation Centre. Special attention should be given to pregnant prisoners and no child should be allowed to grow up in prison unless the imprisoned mother does not have family support.

161. The Special Representative has also raised the issue of hazardous child labour. He appreciates the inclusion in the new Labour Code of a provision to protect children for exploitation through work. The new Labour Code sets the minimum age for admission to employment at 15. The minimum age for any kind of employment or work which, by its nature, could be hazardous to the health, safety, or well-being of an adolescent is 18 years. Children aged between 12 and 15 years can be employed, provided that the work is not hazardous and will not affect their school attendance or their participation in vocational

training. The Code does not, however, provide for a maximum number of work-hours.

162. According to an April 1997 report of the ILO International Programme on the Elimination of Child Labour, entitled "Child labour in Cambodia: an overview", which is based on the results of the 1996 socio-economic survey conducted by the National Institute of Statistics of the Ministry of Planning, the enforcement of the relevant legislation on child labour in Cambodia is problematic. To date, no employer has been brought to court for violating existing child labour regulations. The Department of Labour Inspection is understaffed and faces severe logistical problems. Moreover, there is a clear lack of understanding and awareness of the parameters of the problem among the inspectors which needs to be addressed.

163. The number of working children in the age group 5-17 years is 616,023, or 15.9 per cent of all children in this age group. For the age group 10-14 years, the rate is as high as 16 per cent. Most working children were to be found in rural areas (90.6 per cent). The ILO survey also showed that there are strong variations among provinces in the incidence of child labour. The agricultural sector accounted for almost 9 of the 10 child workers aged 6 to 14 years in Cambodia as a whole, most of them unpaid family workers.

164. Another problem requiring attention by the Cambodian authorities is the phenomenon of child soldiers. Although this problem has previously been raised in relation to Khmer Rouge forces, it is clear that children have been used also by various military units on the governmental side, in particular for carrying ammunition.

165. Of all working children aged between 5 and 17 years, 39.3 per cent work more than 40 hours per week, 40.5 per cent work between 20 and 39 hours and 20.2 per cent work less than 20 hours. Further, 67.9 per cent of children work on a temporary basis, that is, seasonally, during school vacations or casually. Often, they are helping parents or relatives, frequently at home, the figure for boys being 38.9 per cent and for girls, 46.4 per cent. Eighty per cent of children do not receive any wage. Eighty-three per cent of working children aged 5 to 14 years work to supplement the family income or to help pay their parents' household debts. Only 4 per cent work with the purpose of acquiring experience or training.

166. The ILO report notes that girls are a vulnerable group in current Cambodian society. The percentage of working children in all age groups was higher among females than among males, in both rural and urban areas. They have less access to education at the primary level and even less at the secondary level.

167. The available data also suggest that many working children in Cambodia are exposed to serious health and safety hazards. Hazardous occupations performed by children in Cambodia are considered to be those of construction workers, domestic servants, porters, vehicle drivers, street vendors, plantation workers, salt field workers, stonecutters, factory workers and fish processors. According to the ILO survey, more than half of the working children attend school. No less than 6,000 children are estimated to be working on the streets

of Phnom Penh alone. The majority of street children come from the provinces and still have links with their families.

168. Factors encouraging the supply of child labour are poverty, the high incidence of single female-headed families (approximately 20 per cent), large families, and the poor quality and accessibility of education. There is also a demand for low-skilled, cheap and docile labour; children are less aware of their rights, are cheaper to employ, are more willing to take orders and do monotonous work without complaining, and are more easily exploitable. With the growing Cambodian economy, causing children to migrate from rural areas to the cities, this problem is likely to escalate further.

169. The Special Representative welcomes the signature in May 1997 of a memorandum of understanding between ILO and the Government of Cambodia to formalize areas of cooperation in the field of child labour. At a subsequent stage, a national framework for action against hazardous child labour in Cambodia should be finalized. The Special Representative recommends the Government also to ratify ILO Convention No. 138, which is aimed at protecting children from exploitation at work.

170. The Cambodian National Council for Children is currently discussing the establishment of a subcommittee on child labour. The enforcement of the relevant legislation on child labour by the Department of Labour Inspection remains problematic and, to date, no employer has been judged by a court as violating child labour regulations. There is a clear lack of awareness and understanding of the problem by the labour inspectors, as well as the police, and the legal system is very weak, which is further aggravated by the many loopholes in the current law.

171. The Special Representative recommends that everything be done to remove children from the most dangerous and hazardous work situations and that, at the very least, the factors making their work dangerous be removed at once. The Government should gather detailed information on child labour and its hazards. The Government should further take every possible action to prevent all young children from having to work and ensure that they receive at least a primary school education, especially children in the most remote areas.

172. The Government should identify priorities and measures to end immediately the most intolerable forms of child labour. Preventive measures must be taken so that the current situation does not further deteriorate. The existing legislation must be completed and the labour inspection and policing capacity enforced to ensure the protection of children against all forms of exploitation. In order to ensure that progress is made in adequately addressing these serious problems, the Special Representative recommends that the relevant ministries and governmental institutions cooperate closely with workers' and employers' organizations, non-governmental organizations and international organizations, such as ILO and UNICEF.

E. Other developments

1. Landmines

173. Millions of landmines continue to sit as time bombs in Cambodia's rice paddies, fields, forests, mountains, lakes and streams. They kill or injure thousands of Cambodians each year in the most indiscriminate manner. Landmines and unexploded ordnance also render large areas of the land unfit for agriculture and development, thereby seriously retarding the economic development of the country. Their use by any party must be stopped immediately.

174. King Sihanouk and all leading politicians of Cambodia have endorsed a national ban on the use, stockpiling and manufacture of anti-personnel landmines. The Special Representative welcomes these statements and highly commends the effort of the King and the Government to eliminate anti-personnel landmines. He also welcomes and warmly encourages the efforts currently under way to legislate a ban.

175. The draft law on the banning of anti-personnel landmines has been submitted to the Council of Ministers for approval and will be sent to the National Assembly. The Special Representative welcomes the serious consideration of this draft by the Ministry of Defence and the comments on the draft law received in June 1997. He remains concerned, however, at the slow pace of consideration of this draft law. Its adoption and implementation should be a priority of the Government and National Assembly so as to ensure that no landmines will ever again be laid in Cambodia. Instead of merely trying to remove old mines as fast as new mines are being laid, the passage and implementation of this law will allow demining efforts to begin to make significant progress towards the goal of clearing all of Cambodia's land. The adoption of this law will strengthen the Government's stated foreign policy objective of opposition to the manufacture, export and use of mines. The adoption of this law will also facilitate the mobilization of further funding from the international community for the enormous and expensive task of demining.

2. Reports to the treaty committees

176. The Government of Cambodia has made considerable efforts to meet its reporting obligations in relation to the six major international human rights conventions that Cambodia has ratified. An inter-ministerial committee was set up within the Ministry of Justice for the purpose of drafting the reports. On 4 February 1997, the report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination was submitted to the United Nations. The report on the Convention on the Rights of the Child has not, however, been submitted as previously indicated by the two Prime Ministers. The situation is the same as regards the report on the International Covenant on Civil and Political Rights. This delay is unfortunate as both reports are long overdue.

177. The report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has also been drafted and forwarded to the inter-ministerial committee. There has, however, been no further work to

finalize and approve this report since early July 1997. Neither has there been further discussion on how to report on the International Covenant on Economic, Social and Cultural Rights.

178. The Special Representative expresses the hope that this important work of analysing the implementation of international human rights standards will be continued as a matter of urgency. He suggests further technical assistance to facilitate this endeavour. It is important, however, that the Government itself assign priority to the process.

F. Implementation of previous and new recommendations

179. The General Assembly, in resolution 51/98, expressed concern about the serious problem of impunity in Cambodia, in particular with regard to unlawful acts by the military and police. Unfortunately, the Special Representative cannot report much progress in this area. Efforts are being made by the Ministry of Justice to improve the functioning of the judiciary, United Nations and bilateral cooperation, mainly with Australia and Japan, has been constructive. Limited personnel and material resources, however, make the progress of development slow. Courts have still not achieved independence from political authorities and have, in a number of cases, been under intolerable pressure from military officers. The law which hinders the arrest and prosecution of civil servants without the explicit permission of their superiors is still in place.

180. Serious crimes, including murders, with a political connotation continue to be left unresolved. For instance, no one has been arrested and prosecuted in relation to the killings of four journalists and murder attempts on several others in recent years. A commission was established after the hand grenade attack on the KNP rally in late March 1997 but, more than six months later, there is no report on the matter and no legal action has been taken. This pattern of impunity in politically related criminal cases casts a shadow over the political debate and is a serious problem in relation to the possibility of conducting elections which are genuinely free.

181. The General Assembly welcomed the comments made by the two Prime Ministers on the previous report of the Special Representative (A/51/453/Add.1), in which they stated that the Government would ensure that members of the armed forces would remain neutral during the election campaign, that the vote would be secret and that local and international observers would be invited. Steps have since been taken to honour those pledges in the preparations for the elections. It also seems that the non-governmental community will be drawn upon for both voter education and election monitoring. Another aspect referred to by the General Assembly, namely, that the Government should ensure fair access of political parties to the media, has not, however, been positively implemented. Since July 1997, the situation has worsened, in particular in relation to access to radio and television. This raises serious questions on whether elections, in the present circumstances, can be fair.

182. The improvement of the conditions in prisons was another of the recommendations made by the General Assembly. The point has been raised

repeatedly by the Special Representative with the Ministers of the Interior and with the Prime Ministers. In fact, the situation has been allowed to deteriorate with the worsening budget situation. Diseases and starvation are reported. Widespread corruption has added to the problem and it is no exaggeration to speak of a deep crisis in the prison administration.

183. Steps have been taken to combat child prostitution including the arrest of foreigners reported to have sexually abused minors. Further and more systematic actions are, however, needed, as outlined in the present report. This is another area in which international cooperation, through UNICEF, ILO and others, may be constructive.

184. The Special Representative, as with other representatives of the United Nations, has had access to senior representatives of the Government. Discussions have usually been open and constructive, however, agreements have often not been followed through within the administration. Memoranda submitted for comment and/or action have several times not been responded to at all, even when they dealt with urgent matters such as, for instance, torture.

185. An explanation for these shortcomings is probably the budget constraints and other effects of the economic difficulties facing Cambodia. Another reason is the shortage of educated professionals within and outside the administration. A further explanation, however, seems to be related to political decision-making and the inability to combine effectiveness with compromise.

186. One example is the discussion on whether the Supreme Council of Magistracy should be convened. This body is essential for the reform and overseeing of the judiciary and for the establishment of the Constitutional Council. The Special Representative has repeatedly suggested that it should be convened. The FUNCINPEC part of the Government, however, blocked this move with the argument that it would confirm a political imbalance of the judiciary; they pointed to the obvious fact that practically all judges and prosecutors were affiliated to CPP. The CPP argument was that the consequence of appointing FUNCINPEC judges would be to make these posts political. There were solutions to this impasse, which also would have strengthened the independence of the justice system, but the two political parties were unable to find them.

187. The political tensions which, though going back a long way, began to grow from the spring of 1996, contributed to the lack of cohesion of action by the Government. At the same time, it was clear that the bipolar political situation before July 1997 did contribute to a sort of balance which allowed for a free debate, not least in the media. The task ahead is to make a new attempt to build a genuine multi-party atmosphere with tolerance and mutual respect among the political representatives. Such a change requires a willingness to seek and reach understandings and compromises in the interests of all Cambodians.

G. Concluding remarks

188. In line with his mandate, the Special Representative has maintained contact with the Government and people of Cambodia. During each of his three recent visits he has met Government leaders and communicated with them by mail in

between visits. The spirit of the exchanges has been constructive. He has endeavoured to keep in touch with non-governmental organizations, in particular those working on human rights, the rights of the child, demining and other development causes. He has also held discussions with trade unions and political parties outside the Government.

189. To fulfil his second task, to guide and coordinate the United Nations human rights presence in Cambodia, the Special Representative has stayed in constant touch with the Cambodia Office of the United Nations High Commissioner for Human Rights. During his visits to Cambodia he has held meetings with the Special Representative of the Secretary-General for Cambodia and with representatives of the various organizations of the United Nations system, including UNDP, WFP, UNICEF, ILO and UNESCO. He has also maintained close contact with the High Commissioner for Human Rights in Geneva and the Department of Political Affairs at United Nations Headquarters in order to contribute to the coordination of a United Nations approach to the development of Cambodia.

190. The third task of the Special Representative is to assist the Government in the promotion and protection of human rights. The present report is part of that mission. It is understood by everyone involved that an important function of the Special Representative is to help the Government to define key human rights problems and to assess difficulties and progress in the attempts to address them. The transparency of this approach benefits the discussion in Cambodia and is of importance for international organizations mandated to cooperate with Cambodia. The Special Representative seeks to influence relevant actors within the international community, governmental or non-governmental, to support developments in Cambodia that would promote civil, cultural, economic, political and social rights.

191. Although the intention is constructive, it is in the nature of reports such as the present one that there will be a focus on critical and negative aspects. It is therefore necessary to emphasize that the Special Representative has encountered much goodwill and many persons, within the Government and the judiciary as well as in the non-governmental sector, who perform heroic work for the improvement of the human rights situation of Cambodia. They contribute to genuine progress.

III. ROLE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS IN ASSISTING THE GOVERNMENT AND THE PEOPLE OF CAMBODIA IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

192. During the period under review the Cambodia Office of the United Nations High Commissioner for Human Rights continued its efforts to assist the Government and people of Cambodia in the transition to democracy, the rule of law and respect for human rights.

193. The mandate of the Cambodia Office remains to: (a) manage the implementation of educational and technical assistance and advisory services programmes, and to ensure their continuation; (b) assist the Government of Cambodia established after the election, at its request, in meeting its

obligations under the human rights instruments recently adhered to, including the preparation of reports to the relevant monitoring committees; (c) provide support to bona fide human right groups in Cambodia; (d) contribute to the creation and/or strengthening of national institutions for the promotion and protection of human rights; (e) continue to assist with the drafting and implementation of legislation to promote and protect human rights; (f) continue to assist with the training of persons responsible for the administration of justice; and (g) assist the Special Representative in the discharge of his functions.

194. More detailed information on the work of the Cambodia Office is available in the reports of the Secretary-General to the Commission on Human Rights, covering the periods October 1993-January 1994 (E/CN.4/1994/73), July-November 1994 (E/CN.4/1995/89), July-November 1995 (E/CN.4/1996/92) and July-December 1996 (E/CN.4/1997/84). Information on the work of the Cambodia Office was also contained in reports to the General Assembly, covering the periods February-July 1994 (A/49/635/Add.1), December 1994-July 1995 (A/50/681/Add.1 and Add.1/Corr.1) and December 1995-July 1996 (A/51/552). A more detailed report of the work of the Cambodia Office in 1997 will be prepared for the Commission on Human Rights at its fifty-fourth session in 1998.

195. The Cambodia Office continued to provide assistance to the missions of the Special Representative and to coordinate monitoring and investigations of human rights problems in Cambodia. The Office continues to translate into the Khmer language the reports and resolutions of the General Assembly and the Commission on Human Rights on the human rights situation in Cambodia and to widely distribute the Khmer language texts to Government officials, the Khmer language press, non-governmental organizations and others.

196. The Office provided technical assistance to the Government in preparing basic drafts of laws or commenting on drafts prepared by one of the ministries. Once a draft reached the National Assembly, the Members of Parliament were informed of concerns and once a law was approved and promulgated, the Office monitored its implementation.

197. From January to September 1997, the Office focused on the following legal documents: law on drugs, labour law, communal and national election laws, law on non-governmental organizations, law on political parties, law on the Constitutional Council and on the Supreme Council of Magistracy, law to ban anti-personnel landmines, common military statute, national security law, sub-decree on the press, law on disability and on prison regulations.

198. Since April 1997, a consultant recruited by the Office of the High Commissioner for Human Rights has assisted the Ministry of Justice in drafting an entire criminal procedure and penal code. The Judicial Mentors Programme continued and expanded its activities. Foreign, experienced lawyers recruited from the region and based inside a Cambodian court, give daily advice and training to the judges and prosecutors in handling cases.

199. The Office carefully monitors, through the branch offices in the provinces and in collaboration with Cambodian human rights non-governmental organizations,

the situation in Cambodian prisons and intervenes in case of human rights violations and food emergency crises.

200. With financial assistance from AusAID, the Office produced a 1,000-page compilation of the legal documents currently in force in Cambodia, mainly with regard to the administration of justice. This Khmer language volume will form an indispensable source of information for magistrates, lawyers and police in their daily practice.

201. The Office continued to collaborate with, and provide support to, the National Assembly Commission on Human Rights and Reception of Complaints.

202. In the area of education and training, the Office has developed human rights curricula, organized and conducted workshops and supported and assisted governmental institutions and Cambodian non-governmental organizations in carrying out human rights education and training projects. The Office concentrated on a number of programmes, including: Royal Cambodian Armed Forces human rights awareness programme; gendarmerie human rights and law training; human rights training of prison officials, lawyer trainees and Buddhist monks; minority rights training; squatters rights training; anti-HIV/AIDS discrimination training; labour rights training; and training of new investigators of the National Assembly Commission on Human Rights. Human rights training of law enforcement officials has been in progress for more than two years.

203. Many of these projects are comprehensive in scope and reach a majority of the provinces. For example, the Royal Cambodian Armed Forces human rights awareness programme consists of a human rights curricula drafted by the Cambodia Office and human rights instructors who are officers of the armed forces and trained by the Cambodia Office. With the support and assistance of the Office, these instructors conducted 42 three-day workshops in 16 provinces from January to July 1997. A total of 2,395 officers and soldiers have been trained.

204. With regard to human rights training of law enforcement officials, the curriculum was drafted by the Cambodia Office and three Cambodian human rights non-governmental organizations. Approximately 20,000 police officials have been trained in five-day workshops held over the past two years in most of the provinces. Also, the Office assisted a Cambodian non-governmental organization in the drafting of curriculum and training of Buddhist monks from each province to become human rights instructors. The Office assisted another Cambodian human rights non-governmental organization in preparing a curriculum for use in formal education facilities administered by the Ministry of Education and Ministry of Religion for novice monks.

205. Other projects consisted of developing curriculum and training non-governmental organizations in utilizing the curricula on specific topics of human rights training. These include minority rights training, anti-HIV/AIDS discrimination training and labour rights training.

206. At the request of the Government and with the support of UNDP, the Cambodia Office has initiated efforts to implement its human rights education and training programmes in areas and among populations under the control of the

former Khmer Rouge that have been previously inaccessible to either the Government or to the United Nations since the Kampuchea Democratic Party withdrew from the UNTAC peace process in 1992.

207. A total of 51,210 copies of human rights materials have been disseminated. Recipients were primarily the Government and non-governmental organizations. In June 1997, 10,000 copies of human rights materials were disseminated in former Khmer Rouge zones.

208. The Cambodia Office continued to provide assistance to the subcommittees and the inter-ministerial committee in the preparations of reports to treaty bodies. The report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination was sent to the Committee on the Elimination of Racial Discrimination on 4 February 1997.

209. The Cambodia Office is continuing its assistance to the Cambodian human rights non-governmental organizations, in particular to strengthen their presence and activities at the provincial level. The Cambodia Office is providing support to those non-governmental organizations in terms of material equipment, core funding and training. In May 1997, US$ 149,000 was granted from the United Nations Trust Fund for a Human Rights Education Programme in Cambodia for the support to local non-governmental organizations at the provincial level. An additional US$ 89,000 has been allocated from the Trust Fund to finance human rights projects of eight human rights non-governmental organizations. The Cambodia Office is seeking additional funding to enable it to further support these human rights groups which play a crucial role in Cambodian society and which have been particularly active in monitoring the human rights situation.

210. The Cambodia Office is continuing to follow developments which involve human rights groups, such as the proposal for the creation of a national human rights commission, and the role of the coalitions of non-governmental organizations, COMFREL and COFFEL, in any future election. Assistance to the Human Rights Action Committee is also ongoing, as is assistance in strengthening the capacity of several indigenous human rights non-governmental organizations.

211. In 1997, with the support of UNDP and in cooperation with the United Nations Volunteers Programme, the Cambodia Office established three new provincial offices. The Cambodia Office continued to benefit from the generous support of UNDP in several areas of its work, including the provision of legal advice to the National Assembly, supporting the National Assembly Commission on Human Rights and Reception of Complaints, provision of training for provincial judges and court staff, assisting the Government in developing forensic capability, and provision of training to police, commune leaders and military officers at the provincial level.

212. The Office of the United Nations High Commissioner for Human Rights appreciates the continuous support of the international community for the human rights programme in Cambodia, especially through the generous financial contributions to the United Nations Trust Fund for a Human Rights Education Programme in Cambodia.

Notes

[1] See Official Records of the Economic and Social Council, 1993, Supplement No. 3 (E/1993/23), chap. II, sect. A.

[2] E/CN.4/73 and Add.1, E/CN.4/1995/87 and Add.1 and E/CN.4/1996/93.

[3] E/CN.4/1997/85.

[4] E/CN.4/1996/93.

[5] A/51/453/Add.1.